IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 486 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARI TARA CHOKSHI FOUNDATION TRUST

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 486 of 1996

MR MANISH R BHATT for Petitioner No. 1

MR Mr. PD Bhate, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the impugned notices issued by the respondent dated 29.12.1995 which is for recovery of an amoutn of Rs. 57320 being deficit stamp duty and Rs. 250 by way of penalty, in all Rs. 57,550 on the basis of

the order which came to be passed by the respondent in exercise of the powers under Section 32-A of the Bombay Stamp Act, 1958["the Act" for short]. The document in question came to be executed in respect of the land of Survey Nos. 1174, 1174/2 and 1175 situate at Village Mouje Rajpur, Taluka-Kadi document came to be executed in the month of October 1986 and the same came to be registered with the Sub-Registrar, Kadi, on 14.10.1986 bearing Registration No. 1323. It appears that the proceedings came to be initiated by the respondent in exercise of powers under Section 32-A of the said Act and the order came to be passed on 30th October 1992 which according to the petitioner is not served upon the petitioner by which deficit stamp duty is assessed at Rs. 57,550, and on the basis of the same the respondent No.1 has issued notice for recovery of the aforesaid amount, which is the subject matter of the present Special Civil Application under Article 226/227 of the Constitution of India.

2. Ms. M.M. Bhatt, learned advocate appearing on behalf of the petitioner has relied upon unreported Judgment of this Court dated 5.12.2001 in the case of Ambuja Metal Industries Pvt.Ltd. Vs. State of Gujarat, rendered in Special Civil Application No. 654 of 2000; unreported Judgment of this Court dated 11.8.2003 in the case of Kumarpal Kundanmal Bafna Vs. State of Gujarat rendered in Special Civil Application No. 4434 of 2003; and also unreported judgment of this Court in the case of Dineshbhai Trambaklal Pandya Vs. State of Gujarat, rendered in Special Civil Application No. 12581 of 2003 on 19.11.2003 in support of her submission that the respondent could not have exercised power after a period of 6 years of execution of the documents. Relying upon the aforesaid judgments she has submitted that exercise of powers by the respondent under Section 32-A of the Act is an exercise of arbitrary powers and the same being illegal she has requested to allow the present Special Civil Application on that ground alone. She has also further submitted that in fact the petitioner is not served with the notice under Rule 4 of the Bombay Stamp [Determination of Market Value of Property] Rules, 1984 ("the Rules" for short) and/or even the order dated 30th October 1992 on the basis of which the recovery notice has been issued. She has further tried to argue even on merits also with regard to fixation of market value by the respondent.

3. Shri PD Bhate, learned AGP appears on behalf of the respondent. There is no affidavit-in-reply filed on behalf of the respondent justifying the delay in

initiation of proceeding after a period of 6 years. There is also no affidavit-in-reply denying the contentions on behalf of the petitioner that the petitioner is not served with any notice under Rule 4 of the Rules and/or the impugned order dated 30th October 1992. There is no affidavit-in-reply filed on behalf of the respondent justifying the fixation of market value by the respondent on the basis of which the petitioner is directed to pay an amount of Rs. 57,550 towards deficit stamp duty.

4. Heard the learned advocates appearing on behalf of the parties. Considering the judgments of this Court in Ambuja Metal Industries Pvt.Ltd. (Supra); Kumarpal Kundanmal Bafna (supra); and Dineshbhai Trambaklal Pandya rendered in Special Civil Application No. 654 of 2000, Special Civil Application No. 4434 of 2003, and Special Civil Application No. 12581 of 2003 respectively, and in absence of any justification for delay in initiation of proceedings under Section 32-A of the Act after a period of 6 years, the exercise of powers by the respondent under Section 32-A of the Act is required to be held as arbitrary and illegal exercise of power. There is no reason whatsoever given by the respondent justifying the delay in initiation of proceedings under Section 32-A of the Act. Considering the aforesaid 3 judgments and considering the fact where powers are exercised after a period of 3 to 4 years without giving justification for the delay, this Court in the aforesaid 3 judgments has quashed and set aside the orders passed by the authorities under the Bombay Stamp Act in exercise of powers under Section 32-A of the Act. The present Speciail Civil Application is therefore required to be allowed and the impugned order and recovery notice are required to be quashed and set aside and the same are hereby quashed and aside. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

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